EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

MEDIA ACCESS PROJECT

June 30, 1993

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036

RECEIVED
JUN 30 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-8
Ex Parte Presentat

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's rules, the Center for the Study of Commercialism hereby submits two copies of the attached letter. The letter will be delivered today to all three Commissioners and the Chief of the Mass Media Bureau.

If you have any questions regarding this submission, please call me at 202-232-4300.

Thank you.

Sincerely,

Gigi B. Sohn

2000 M STREET, NW WASHINGTON, D.C. 20036
(202) 232-4300

No. of Copies rec'd 0+1
List A B C D E

June 30, 1993

MEDIA ACCESS PROJECT

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20036

RECEIVED

JUN 30 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-8
Ex Parte Presentation

Dear Mr. Caton:

On behalf of the Center for the Study of Commercialism ("CSC"), we are submitting a recent Supreme Court case, United States v. Edge, 61 USLW 4759 (June 25, 1993) ("Edge") for inclusion in the record of the above docket. CSC has previously filed comments and reply comments in this proceeding. Pursuant to Section 1.1206(a)(1) of the Commission's rules, two copies of this letter are being submitted to you under separate cover.

The Edge case is instructive on one of the issues raised in this matter, i.e., whether the Commission can constitutionally limit the amount of commercial matter presented over broadcast stations. CSC has maintained throughout this proceeding that there is no doubt that the Commission has the statutory and constitutional authority to do so. See, e.g., CSC Comments at 5-14. Edge reaffirms CSC's position; the Court clearly holds that the government has very broad discretion to regulate commercial matter, and that the means it uses must only "reasonably fit" an "overall problem the government seeks to correct." Edge, supra, at 4763.

In Edge, the Supreme Court upheld a statute which prohibited all lottery advertising on broadcast stations in states which do not have lotteries. The Court found the statute constitutional even in the case of a nonlottery state (North Carolina) broadcast station which listenership consisted almost entirely of lottery state (Virginia) residents. The Court ruled that the governmental interest in supporting North Carolina's laws against gambling was served by the statute even if, as applied to the broadcast station in this case, there was "only marginal advancement of that interest." Edge, supra, at 4762.

Thus, the Edge case limits the constitutional protection for commercial speech beyond that of the recently decided case of City of Cincinnati v. Discovery Network, Inc., 61 USLW 4272 (March 24, 1993) ("Discovery Network"). See, Edge, supra, at 4764 (Stevens, J. dissenting.) In Discovery Network, the Court struck down a prohibition on commercial newsracks because, as applied to the respondent's newsracks, they did not advance the City's overall interests in increasing safety and improving the aesthetic condition of the city. The Court thus found no "reasonable fit" between the regulation and the government interest, because the permissible noncommercial newsracks contributed to the same safety and aes-

2000 M STREET, NW WASHINGTON, D.C. 20036
(202) 232-4300

thetic problems the City sought to ameliorate.[1]

On the other hand, the Court in Edge found that the validity of a restriction on commercial speech is judged "by the relation it bears to the general problem of accommodating the policies of both lottery and nonlottery States, not by the extent to which it furthers the Government's interest in an individual case." Edge at 4763 [emphasis added].[2] By holding that a government restriction on commercial speech is constitutional even if, as applied, there is no reasonable fit between the government's interest and the regulation, as long as there is a reasonable fit between the regulation and the government's overall interest, the Court in Edge severely limits the scope of Discovery Network, and thereby reduces the protection afforded commercial matter in the broadcast context.

Thus, CSC regards Edge as dispelling any doubt that the Commission has broad latitude to regulate commercial matter under the public interest standard of the Communications Act.

Respectfully submitted,

Gigi B. Sohn

Andrew Jay Schwartzman

Counsel for Center for the Study of Commercialism

cc. Commissioners
Roy Stewart, Chief, Mass Media Bureau

---

[1]CSC has argued that the Discovery Network case does not in any way expand the constitutional protection for commercial speech; it merely reaffirms the validity of the "reasonable fit" test of prior cases. See CSC Reply Comments at 18-20. Indeed, the Court made special mention that government regulation of commercial speech which "assert[s] an interest in preventing commercial harms" is constitutionally permissible. Discovery Network, supra, at 4276. See CSC Reply Comments at 18-20. Thus, it would be fully consistent with Discovery Network and its predecessor cases for the Commission to find that its interest in reducing the harms wrought over the public's airwaves by excessive commercialization justifies a limitation on the number of hours a broadcaster can broadcast pure commercial speech. CSC Reply Comments at 19.

[2]Under this standard, certain broadcasters' arguments that the Commission may only judge whether stations predominantly devoted to home shopping are serving the public interest on a case-by-case basis, necessarily fail. See, e.g., HSN Comments at 11.

The United States Law Week

Extra Edition No. 2
Supreme Court
Opinions

June 22, 1993 • THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C. • Volume 61, No. 48

OPINIONS ANNOUNCED JUNE 25, 1993

The Supreme Court decided:

EMPLOYMENT DISCRIMINATION—Practice and Procedure

Plaintiff who has established prima facie case of intentional discrimination in violation of Title VII of 1964 Civil Rights Act is not necessarily entitled to judgment as matter of law even if factfinder rejects employer's articulated non-discriminatory reason for adverse employment action but, instead, retains burden of persuading factfinder that adverse action was taken for discriminatory reason barred by Title VII. (*St. Mary's Honor Center v. Hicks*, No. 92-602) ..... Page 4782

JUDGMENTS—Punitive Damages

Punitive damages award by jury of $10 million in common law slander of title action in which plaintiff obtained $19,000 in compensatory damages to cover cost of defending against frivolous declaratory judgment action, purportedly filed by defendant to clear cloud on title when its real intention was to reduce royalty payments under oil and gas lease, does not violate Fourteenth Amendment's Due Process Clause. (*TXO Production Corp. v. Alliance Resources Corp.*, No. 92-479) ..... Page 4766

MASS MEDIA—Broadcast Media

Federal statutes that prohibit broadcast of lottery advertising by broadcaster licensed to state that does not allow lotteries, while allowing such broadcasting by broadcaster licensed to state that sponsors lottery, 18 USC 1304 and 1307, do not violate First Amendment as applied to station, licensed in non-lottery state, over 90 percent of whose listeners reside in lottery state and whose listeners in licensing state are exposed to lottery advertising via media from lottery state. (*U.S. v. Edge Broadcasting Co.*, No. 92-486) ..... Page 4759

Full Text of Opinions

No. 92-486

UNITED STATES AND FEDERAL COMMUNICATIONS COMMISSION, PETITIONERS *v.* EDGE BROADCASTING COMPANY T/A POWER 94

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Syllabus

No. 92-486. Argued April 21, 1993—Decided June 25, 1993

Congress has enacted federal lottery legislation to assist States in their efforts to control this form of gambling. Among other things, the scheme generally prohibits the broadcast of any lottery advertisements, 18 U. S. C. §1304, but allows broadcasters to advertise state-run lotteries on stations licensed to a State which conducts such lotteries, §1307. This exemption was enacted to accommodate the operation of legally authorized state-run lotteries consistent with continued federal protection to nonlottery States' policies. North Carolina is a nonlottery State, while Virginia sponsors a lottery. Respondent broadcaster (Edge) owns and operates a radio station licensed by the Federal Communications Commission to serve a North Carolina community, and it broadcasts from near the Virginia-North Carolina border. Over 90% of its listeners are in Virginia, but the remaining listeners live in nine North Carolina counties. Wishing to broadcast Virginia lottery advertisements, Edge filed this action, alleging that, as applied to it, the restriction violated the First Amendment and the Equal Protection Clause. The District Court assessed the restriction under the four-factor test for commercial speech set forth in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U. S. 557, 566—(1) whether the speech concerns lawful activity and is not misleading and (2) whether the asserted governmental interest is substantial; and if so, (3) whether the regulation directly advances the asserted interest and (4) whether it is not more extensive than is necessary to serve the interest—concluding that the statutes, as applied to Edge, did not directly advance the asserted governmental interest. The Court of Appeals affirmed.

Held: The judgment is reversed.

956 F. 2d 263, reversed.

JUSTICE WHITE delivered the opinion of the Court as to all but Part III-D, concluding that the statutes regulate commercial speech in a manner that does not violate the First Amendment.

(a) Since the statutes are constitutional under *Central Hudson*, this Court will not consider the Government's argument that the Court need not proceed with a *Central Hudson* analysis because gambling implicates no constitutionally protected right and the greater power to prohibit it necessarily includes the lesser power to ban its advertisement. This Court assumes that *Central Hudson*'s first factor is met. As to the second factor, the Government has a substantial interest in supporting the policy of nonlottery States and not interfering in the policy of lottery States.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released • • • at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

NOTICE: These opinions are subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Copyright © 1993 by The Bureau of National Affairs, Inc
0148-8139/93/$0+$1.00

(b) The question raised by the third *Central Hudson* factor cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single entity, for even if it were not, there would remain the matter of a regulation's general application to others. Thus, the statutes' validity as applied to Edge, although relevant, is properly addressed under the fourth factor. The statutes directly advance the governmental interest at stake as required by the third factor. Rather than favoring lottery or nonlottery States, Congress chose to support nonlottery States' antigambling policy without unduly interfering with the policy of lottery States. Although Congress surely knew that stations in one State could be heard in another, it made a commonsense judgment that each North Carolina station would have an audience in that State, even if its signal reached elsewhere, and that enforcing the restriction would insulate each station's listeners from lottery advertising and advance the governmental purpose in supporting North Carolina's gambling laws.

(c) Under the fourth *Central Hudson* factor, the statutes are valid as applied to Edge. The validity of commercial speech restrictions should be judged by standards no more stringent than those applied to expressive conduct entitled to full First Amendment protection or to relevant time, place, or manner restrictions, *Board of Trustees of State Univ. of New York* v. *Fox*, 492 U. S. 469, 477–478; the fit between the restriction and the government interest need only be reasonable, *id.*, at 480. Here, the fit is reasonable. Allowing Edge to carry the lottery advertisements to North Carolina counties would be in derogation of the federal interest in supporting the State's antilottery laws and would permit Virginia's lottery laws to dictate what stations in a neighboring State may air. The restriction's validity is judged by the relation it bears to the general problem of accommodating both lottery and nonlottery States, not by the extent to which it furthers the Government's interest in an individual case. *Ward* v. *Rock Against Racism*, 491 U. S. 781, 801. Nothing in *Edenfield* v. *Fane*, 507 U. S. ___, suggested that an individual could challenge a commercial speech regulation as applied only to himself or his own acts.

(d) The courts below also erred in holding that the restriction as applied to Edge was ineffective and gave only remote support to the Government's interest. The exclusion of gambling invitations from an estimated 11% of the radio listening time in the nine-county area could hardly be called "ineffective," "remote," or "conditional." See *Central Hudson*, *supra*, at 564, 569. Nor could it be called only "limited incremental support," *Bolger* v. *Youngs Drug Products Corp.*, 463 U. S. 60, 73, for the Goverment interest, or thought to furnish only speculative or marginal support. The restriction is not made ineffective by the fact that Virginia radio and television stations with lottery advertising can be heard in North Carolina. Many residents of the nine-county area will still be exposed to very few or no such advertisments. Moreover, the Government may be said to advance its purpose by substantially reducing lottery advertising, even where it is not wholly eradicated.

WHITE, J., delivered the opinion of the Court with respect to Parts I, II, and IV, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined, the opinion of the Court with respect to Parts III–A and III–B, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined, the opinion of the Court with respect to Part III–C, in which REHNQUIST, C. J., and KENNEDY, SOUTER, and THOMAS, JJ., joined, and an opinion with respect to Part III–D, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined. SOUTER, J., filed an opinion concurring in part, in which KENNEDY, J., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.

JUSTICE WHITE delivered the opinion of the Court, except as to Part III–D.*

In this case we must decide whether federal statutes that prohibit the broadcast of lottery advertising by a broadcaster licensed to a State that does not allow lotteries, while allowing such broadcasting by a broadcaster licensed to a State that sponsors a lottery, are, as applied to respondent, consistent with the First Amendment.

I

While lotteries have existed in this country since its founding, States have long viewed them as a hazard to their citizens and to the public interest, and have long engaged in legislative efforts to control this form of gambling. Congress has, since the early 19th century, sought to assist the States in controlling lotteries. See, *e.g.*, Act of Mar. 2, 1827, §6, 4 Stat. 238; Act of July 27, 1868, §13, 15 Stat. 196; Act of June 8, 1872, §149, 17 Stat. 302. In 1876, Congress made it a crime to deposit in the mails any letters or circulars concerning lotteries, whether illegal or chartered by state legislatures. See Act of July 12, 1876, ch. 186, §2, 19 Stat. 90, codified at Rev. Stat. §3894 (2d ed. 1878). This Court rejected a challenge to the 1876 Act on First Amendment grounds in *Ex parte Jackson*, 96 U. S. 727 (1878). In response to the persistence of lotteries, particularly the Louisiana Lottery, Congress closed a loophole allowing the advertisement of lotteries in newspapers in the Anti-Lottery Act of 1890, ch. 908, §1, 26 Stat. 465, codified at Rev. Stat. §3894 (Supp. 2d ed. 1891), and this Court upheld that Act against a First Amendment challenge in *Ex parte Rapier*, 143 U. S. 110 (1892). When the Louisiana Lottery moved its operations to Honduras, Congress passed the Act of Mar. 2, 1895, 28 Stat. 963, 18 U. S. C. §1301, which outlawed the transportation of lottery tickets in interstate or foreign commerce. This Court upheld the constitutionality of that Act against a claim that it exceeded Congress' power under the Commerce Clause in *Champion* v. *Ames (Lottery Case)*, 188 U. S. 321 (1903). This federal antilottery legislation remains in effect. See 18 U. S. C. §§1301, 1302.

After the advent of broadcasting, Congress extended the federal lottery control scheme by prohibiting, in §316 of the Communications Act of 1934, 48 Stat. 1088, the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme." 18 U. S. C. §1304, as amended by the Charity Games Advertising Clarification Act of 1988, Pub. L. 100–625, §3(a)(4), 102 Stat. 3206.[1] In 1975, Congress amended the statutory scheme to allow newspapers and broadcasters to advertise state-run lotteries if the newspaper is published in or the broadcast station is licensed to a State which conducts a state-run lottery. See 18 U. S. C. §1307 (1988 ed., Supp. III).[2] This exemption was enacted "to

*JUSTICE O'CONNOR joins Parts I, II, III–A, III–B, and IV of this opinion. JUSTICE SCALIA joins all but Part III–C of this opinion. JUSTICE KENNEDY joins Parts I, II, III–C and IV of this opinion. JUSTICE SOUTER joins all but Parts III–A, III–B and III–D of this opinion.

[1] Title 18 U. S. C. §1304 (1988 ed., Supp. III) provides:

"Broadcasting Lottery Information

"Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

[2] Title 18 U. S. C. §1307 (1988 ed. and Supp. III) provides in relevant part:

Published each Tuesday except first Tuesday in September, last Tuesday in July, and last Tuesday in December by The Bureau of National Affairs, Inc., 1231 Twenty-Fifth Street, N.W., Washington, D.C. 20037. Subscription rates (payable in advance) $711.00 first year and $672.00 per year thereafter. Second class postage paid at Washington, D.C., and at additional mailing offices.

accommodate the operation of legally authorized State-run lotteries consistent with continued Federal protection to the policies of non-lottery States." S. Rep. No. 93–1404, p. 2 (1974). See also H. Rep. No. 93–1517, p. 5 (1974).

North Carolina does not sponsor a lottery, and participating in or advertising nonexempt raffles and lotteries is a crime under its statutes. N. C. Gen. Stat. §§ 14–289 and 14–291 (1986 and Supp. 1992). Virginia, on the other hand, has chosen to legalize lotteries under a state monopoly and has entered the marketplace vigorously.

Respondent, Edge Broadcasting Corporation (Edge), owns and operates a radio station licensed by the Federal Communications Commission (FCC) to Elizabeth City, North Carolina. This station, known as "Power 94," has the call letters WMYK–FM and broadcasts from Moyock, North Carolina, which is approximately three miles from the border between Virginia and North Carolina and considerably closer to Virginia than is Elizabeth City. Power 94 is one of 24 radio stations serving the Hampton Roads, Virginia, metropolitan area; 92.2% of its listening audience are Virginians; the rest, 7.8%, reside in the nine North Carolina counties served by Power 94. Because Edge is licensed to serve a North Carolina community, the federal statute prohibits it from broadcasting advertisements for the Virginia lottery. Edge derives 95% of its advertising revenue from Virginia sources, and claims that it has lost large sums of money from its inability to carry Virginia lottery advertisements.

Edge entered federal court in the Eastern District of Virginia, seeking a declaratory judgment that, as applied to it, §§ 1304 and 1307, together with corresponding FCC regulations, violated the First Amendment to the Constitution and the Equal Protection Clause of the Fourteenth, as well as injunctive protection against the enforcement of those statutes and regulations.

The District Court recognized the Congress has greater latitude to regulate broadcasting than other forms of communication. App. to Pet. for Cert. 14a–15a. The District Court construed the statutes not to cover the broadcast of noncommercial information about lotteries, a construction that the Government did not oppose. With regard to the restriction on advertising, the District Court evaluated the statutes under the established four-factor test for commercial speech set forth in *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n of New York*, 447 U. S. 557, 566 (1980):

> "At the outset, we must determine whether the expression is protected by the First Amendment. [1] For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask [2] whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine [3] whether the regulation directly advances the governmental interest asserted, and [4] whether it is not more extensive than is necessary to serve that interest."

Assuming that the advertising Edge wished to air would deal with the Virginia lottery, a legal activity, and would not be misleading, the court went on to hold that the second and fourth *Central Hudson* factors were satisfied: the statutes were supported by a substantial governmental interest, and the restrictions were no more extensive than necessary to serve that interest, which was to discourage participating in lotteries in States that prohibited lotteries. The court held, however, that the statutes, as applied to Edge, did not directly advance the asserted governmental interest, failed the *Central Hudson* test in this respect, and hence could not be constitutionally applied to Edge. A divided Court of Appeals, in an unpublished *per curiam* opinion,[3] affirmed in all respects, also rejecting the Government's submission that the District Court had erred in judging the validity of the statutes on an "as applied" standard, that is, determining whether the statutes directly served the governmental interest in a substantial way solely on the effect of applying them to Edge.

Because the court below declared a federal statute unconstitutional and applied reasoning that was questionable under our cases relating to the regulation of commercial speech, we granted certiorari. 506 U. S. ___ (1992). We reverse.

II

The Government argues first that gambling implicates no constitutionally protected right, but rather falls within a category of activities normally considered to be "vices," and that the greater power to prohibit gambling necessarily includes the lesser power to ban its advertisement; it argues that we therefore need not proceed with a *Central Hudson* analysis. The Court of Appeals did not address this issue and neither do we, for the statutes are not unconstitutional under the standards of *Central Hudson* applied by the courts below.

III

For most of this Nation's history, purely commercial advertising was not considered to implicate the constitutional protection of the First Amendment. See *Valentine* v. *Chrestenson*, 316 U. S. 52, 54 (1942). In 1976, the Court extended First Amendment protection to speech that does no more than propose a commercial transaction. See *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748 (1976). Our decisions, however, have recognized the "'common-sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech." *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 455–456 (1978). The Constitution therefore affords a lesser protection to commercial speech than to other constitutionally guaranteed expression. *Board of Trustees of State Univ. of New York* v. *Fox*, 492 U. S. 469, 477 (1989); *Central*

Exceptions relating to certain advertisements and other information and to State-conducted lotteries

"(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

"(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

"(A) contained in a publication published in that State or in a State which conducts such a lottery; or

"(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

"(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

"(A) conducted by a not-for-profit organization or a governmental organization; or

"(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization."

[3] We deem it remarkable and unusual that although the Court of Appeals affirmed a judgment that an Act of Congress was unconstitutional as applied, the court found it appropriate to announce its judgment in an unpublished *per curiam* opinion.

Hudson Gas & Electric Corp. v. *Public Service Comm'n,* carrying lottery ads if their signals reached into an

the general statutory restriction to Edge, in isolation, would no more than marginally insulate the North Carolinians in the North Carolina counties served by Edge from hearing lottery ads.

In *Ward* v. *Rock Against Racism*, 491 U. S. 781 (1989), we dealt with a time, place, or manner restriction that required the city to control the sound level of musical concerts in a city park, concerts that were fully protected by the First Amendment. We held there that the requirement of narrow tailoring was met if "the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation," provided that it did not burden substantially more speech than necessary to further the government's legitimate interests. *Id.*, at 799. In the course of upholding the restriction, we went on to say that "the validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interest in an individual case." *Id.*, at 801.

The *Ward* holding is applicable here, for we have observed that the validity of time, place, or manner restrictions is determined under standards very similar to those applicable in the commercial speech context and that it would be incompatible with the subordinate position of commercial speech in the scale of First Amendment values to apply a more rigid standard to commercial speech than is applied to fully protected speech. *Fox, supra* at 477, 478. *Ward* thus teaches us that we judge the validity of the restriction in this case by the relation it bears to the general problem of accommodating the policies of both lottery and nonlottery States, not by the time to time listen to Edge to account for 11% of all radio listening in those counties, and that while listening to Edge they heard no lottery advertisements. It could hardly be denied, and neither court below purported to deny, that these facts, standing alone, would clearly show that applying the statutory restriction to Edge would directly serve the statutory purpose of supporting North Carolina's antigambling policy by excluding invitations to gamble from 11% of the radio listening time in the nine-county area. Without more, this result could hardly be called either "ineffective," "remote," or "conditional," see *Central Hudson*, 447 U. S., at 564, 569. Nor could it be called only "limited incremental support," *Bolger* v. *Youngs Drug Product Corp.*, 463 U. S. 60, 73 (1983), for the Government interest, or thought to furnish only speculative or marginal support. App. to Pet. for Cert. 24a, 25a. Otherwise, any North Carolina radio station with 127,000 or fewer potential listeners would be permitted to carry lottery ads because of its marginal significance in serving the State's interest.

Of course, both courts below pointed out, and rested their judgment on the fact, that the 127,000 people in North Carolina who might listen to Edge also listened to Virginia radio stations and television stations that regularly carried lottery ads. Virginia newspapers carrying such material also were available to them. This exposure, the courts below thought, was sufficiently pervasive to prevent the restriction on Edge from furnishing any more than ineffective or remote support for the statutory purpose. We disagree with this conclusion because in light of the facts relied on, it represents too limited a view of what amounts to direct advancement of the

only that "a *significant* number of residents of [the nine-county] area listens to" Virginia radio and television stations and read Virginia newspapers. App. to Pet. for Cert. 25a (emphasis added).

Moreover, to the extent that the courts below assumed that §§ 1304 and 1307 would have to effectively shield North Carolina residents from information about lotteries to advance their purpose, they were mistaken. As the Government asserts, the statutes were not "adopt[ed] . . . to keep North Carolina residents ignorant of the Virginia Lottery for ignorance's sake," but to accommodate non-lottery States' interest in discouraging public participation in lotteries, even as they accommodate the countervailing interests of lottery States. Reply Brief for Petitioners 11. Within the bounds of the general protection provided by the Constitution to commercial speech, we allow room for legislative judgments. *Fox*, 492 U. S., at 480. Here, as in *Posadas de Puerto Rico*, the Government obviously legislated on the premise that the advertising of gambling serves to increase the demand for the advertised product. See *Posadas*, 478 U. S., at 344. See also *Central Hudson*, *supra*, at 569. Congress clearly was entitled to determine that broadcast of promotional advertising of lotteries undermines North Carolina's policy against gambling, even if the North Carolina audience is not wholly unaware of the lottery's existence. Congress has, for example, altogether banned the broadcast advertising of cigarettes, even though it could hardly have believed that this regulation would keep the public wholly ignorant of the availability of cigarettes. See 15 U. S. C. § 1335. See also *Queensgate Investment Co.* v. *Liquor Control Comm'n*, 69 Ohio St. 2d 361, 366, 433 N. E. 138, 142 (Ohio) app. dism'd for want of a substantial federal question, 459 U. S. 807 (1982) (alcohol advertising). Nor do we require that the Government make progress on every front before it can make progress on any front. If there is an immediate connection between advertising and demand, and the federal regulation decreases advertising, it stands to reason that the policy of decreasing demand for gambling is correspondingly advanced. Accordingly, the Government may be said to advance its purpose by substantially reducing lottery advertising, even where it is not wholly eradicated.

Thus, even if it were proper to conduct a *Central Hudson* analysis of the statutes only as applied to Edge, we would not agree with the courts below that the restriction at issue here, which prevents Edge from broadcasting lottery advertising to its sizable radio audience in North Carolina, is rendered ineffective by the fact that Virginia radio and television programs can be heard in North Carolina. In our view, the restriction, even as applied only to Edge, directly advances the governmental interest within the meaning of *Central Hudson*.

D

Nor need we be blind to the practical effect of adopting respondent's view of the level of particularity of analysis appropriate to decide its case. Assuming for the sake of extending the legal regime of Virginia inside North Carolina. One result of holding for Edge on this basis might well be that additional North Carolina communities, farther from the Virginia border, would receive broadcast lottery advertising from Edge. Broadcasters licensed to these communities, as well as other broadcasters serving Elizabeth City, would then be able to complain that lottery advertising from Edge and other similar broadcasters renders the federal statute ineffective as applied to them. Because the approach Edge advocates has no logical stopping point once state boundaries are ignored, this process might be repeated until the policy of supporting North Carolina's ban on lotteries would be seriously eroded. We are unwilling to start down that road.

IV

Because the statutes challenged here regulate commercial speech in a manner that does not violate the First Amendment, the judgment of the Court of Appeals is

Reversed.

JUSTICE SOUTER, with whom JUSTICE KENNEDY joins, concurring in part.

I agree with the Court that the restriction at issue here is constitutional, under our decision in *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n of New York*, 447 U. S. 557 (1980), even if that restriction is judged "as applied to Edge itself." *Ante*, at 12. I accordingly believe it unnecessary to decide whether the restriction might appropriately be reviewed at a more lenient level of generality, and I take no position on that question.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

Three months ago this Court reaffirmed that the proponents of a restriction on commercial speech bear the burden of demonstrating a "reasonable fit" between the legislature's goals and the means chosen to effectuate those goals. See *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. ___ (1993 (slip op., at 6). While the "'fit'" between means and ends need not be perfect, an infringement on constitutionally protected speech must be "'in proportion to the interest served.'" *Id.*, at 6, n. 12 (quoting *Board of Trustees of State Univ. of New York* v. *Fox*, 492 U. S. 469, 480 (1989)). In my opinion, the Federal Government's selective ban on lottery advertising unquestionably flunks that test; for the means chosen by the Government, a ban on speech imposed for the purpose of manipulating public behavior, is in no way proportionate to the Federal Government's asserted interest in protecting the antilottery policies of nonlottery States. Accordingly, I respectfully dissent.

public participation in lotteries." *Ante*, at 3, 14.[1]

Even assuming that nonlottery States desire such assistance from the Federal Government—an assumption that must be made without any supporting evidence—I would hold that suppressing truthful advertising regarding a neighboring State's lottery, an activity which is, of course, perfectly legal, is a patently unconstitutional means of effectuating the Government's asserted interest in protecting the policies of nonlottery States. Indeed, I had thought that we had so held almost two decades ago.

In *Bigelow* v. *Virginia*, 421 U. S. 809 (1975), this Court recognized that a State had a legitimate interest in protecting the welfare of its citizens as they ventured outside the State's borders. *Id.*, at 824. We flatly rejected the notion, however, that a State could effectuate that interest by suppressing truthful, nonmisleading information regarding a legal activity in another State. We held that a State "may not, under the guise of exercising internal police powers, bar a citizen of another State from disseminating information about an activity that is legal in that State." *Id.*, at 824–825. To be sure, the advertising in *Bigelow* related to abortion, a constitutionally protected right, and the Court in *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*, 478 U. S. 328 (1986), relied on that fact in dismissing the force of our holding in that case, see *id.*, at 345. But even a casual reading of *Bigelow* demonstrates that the case cannot fairly be read so narrowly. The fact that the information in the advertisement related to abortion was only one factor informing the Court's determination that there were substantial First Amendment interests at stake in the State's attempt to suppress truthful advertising about a legal activity in another State:

> "Viewed in its entirety, the advertisement conveyed information of potential value to a diverse audience—not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another State and its development, and to readers seeking reform in Virginia. The mere existence of the [organization advertising abortion-related services] in New York City, with the possibility of its being typical of other organizations there, and the availability of the services offered, were not unnewsworthy. Also the activity advertised pertained to constitutional interests." *Bigelow*, *supra*, at 822.[2]

Bigelow is not about a woman's constitutionally protected right to terminate a pregnancy.[3] It is about paternalism, and informational protectionism. It is about one State's interference with its citizens' fundamental constitutional right to travel in a state of enlightenment, not government-induced ignorance. Cf. *Shapiro* v. *Thompson*, 394 U. S. 618, 629–631 (1969).[4] I would reaffirm this basic First Amendment principle. In seeking to assist nonlottery States in their efforts to shield their citizens from the perceived dangers emanating from a neighboring State's lottery, the Federal Government has not regulated the content of such advertisements, to ensure that they are not misleading, nor has it provided for the distribution of more speech, such as warnings or educational information about gambling. Rather, the United States has selected the most intrusive, and dangerous, form of regulation possible—a ban on truthful information regarding a lawful activity imposed for the purpose of manipulating, through ignorance, the consumer choices of some of its citizens. Unless justified by a truly substantial governmental interest, this extreme, and extremely paternalistic, measure surely cannot withstand scrutiny under the First Amendment.

No such interest is asserted in this case. With barely a whisper of analysis, the Court concludes that a State's interest in discouraging lottery participation by its citizens is surely "substantial"—a necessary prerequisite to sustain a restriction on commercial speech, see *Central Hudson Gas & Electric Corp.* v. *Public Service Comm'n*, 447 U. S. 557, 566 (1980)—because gambling "falls into a category of 'vice' activity that could be, and frequently has been, banned altogether," *ante*, at 7.

I disagree. While a State may indeed have *an interest* in discouraging its citizens from participating in state-run lotteries,[5] it does not necessarily follow that its interest is "substantial" enough to justify an infringement on constitutionally protected speech,[6] especially one as draconian as the regulation at issue in this case. In my view, the sea change in public attitudes toward state-run lotteries that this country has witnessed in recent years undermines any claim that a State's interest in discouraging its citizens from participating in state-run lotteries is so substantial as to outweigh respondent's First Amendment right to distribute, and the public's right to receive, truthful, nonmisleading information about a perfectly legal activity conducted in a neighboring State.

While the Court begins its opinion with a discussion of the federal and state efforts in the 19th century to restrict

---

[1] At one point in its opinion, the Court identifies the relevant federal interest as "supporting North Carolina's laws making lotteries illegal." *Ante*, at 10. Of course, North Carolina law does not, nor, presumably, could not, bar its citizens from traveling across the state line and participating in the Virginia lottery. North Carolina law does not make the Virginia lottery illegal. I take the Court to mean that North Carolina's decision not to institute a state-run lottery reflects its policy judgment that participation in such lotteries, even those conducted by another State, is detrimental to the public welfare, and that 18 U. S. C. § 1307 (1988 ed. and Supp. III) represents a federal effort to respect that policy judgment.

[2] The analogy to *Bigelow* and this case is even closer than one might think. The North Carolina General Assembly is currently considering whether to institute a state-operated lottery. See 1993 N. C. S. Bill No. 11, 140th Gen. Assembly. As with the advertising at issue in *Bigelow*, then, advertising relating to the Virginia lottery may be of interest to those in North Carolina who are currently debating whether that State should join the ranks of the growing number of States that sponsor a lottery. See *infra*, at 6.

[3] If anything, the fact that underlying conduct is not constitutionally protected increases, not decreases, the value of unfettered exchange of information across state lines. When a State has proscribed a certain product or service, its citizens are all the more dependent on truthful information regarding the policies and practices of other States. Cf. *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. ___ (1993) (slip op., at 26–27, n. 31) (STEVENS, J., dissenting). The alternative is to view individuals as more in the nature of captives of their respective States than as free citizens of a larger polity.

"For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." *Passenger Cases*, 7 How. 283, 492 (1849).

[4] A State might reasonably conclude, for example, that lotteries play on the hopes of those least able to afford to purchase lottery tickets, and that its citizens would be better served by spending their money on more promising investments. The fact that I happen to share these concerns regarding state-sponsored lotteries is, of course, irrelevant to the proper analysis of the legal issue.

[5] See, e. g., *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. ___, ___, n. 13 (slip op., at 7, n. 13) (noting that restrictions on commercial speech are subject to more searching scrutiny than mere "rational basis" review).

lotteries, it largely ignores the fact that today hostility to state-run lotteries is the exception rather than the norm. Thirty-four States and the District of Columbia now sponsor a lottery.[7] Three more States will initiate lotteries this year.[8] Of the remaining 13 States, at least 5 States have recently considered or are currently considering establishing a lottery.[9] In fact, even the State of North Carolina, whose antilottery policies the Federal Government's advertising ban are purportedly buttressing

Resources Corp. had good title to the oil and gas development rights at issue; that TXO acted in bad faith by advancing a claim on those rights on the basis of a worthless quitclaim deed in an effort to renegotiate its royalty arrangement with Alliance; that the anticipated gross revenues from oil and gas development—and therefore the amount of royalties that TXO sought to renegotiate—were substantial; that TXO was a large, wealthy company; and that TXO had engaged in similar nefarious activities in other parts of the country. In affirming, the State Supreme Court of Appeals, among other things, rejected TXO's contention that the